

**COUNTY OF MARIN
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this day August 15, 2006 by and between the COUNTY OF MARIN, hereinafter referred to as "County" and **QUANTUM ENERGY SERVICES & TECHNOLOGY, INC (QUEST)**, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, County desires to retain a person or firm to provide the following services: to provide energy efficiency services as outlined in the Marin Energy Watch Partnership Contract (see Attachment 1); and

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by County, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit "A"** attached hereto and by this reference made a part hereof.

2. FURNISHED SERVICES:

The County agrees to:

- A. Guarantee access to and make provisions for the Contractor to enter upon public and private lands as required to perform their work.
- B. Make available all pertinent data and records for review.
- C. Provide general bid and contract forms and special provisions format when needed.

3. FEES AND PAYMENT SCHEDULE:

The fees and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit "B"** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Contract.

Contractor shall provide County with his/her/its Federal Tax I.D. number prior to submitting the first invoice.

4. MAXIMUM COST TO COUNTY:

In no event will the cost to County for the services to be provided herein exceed the maximum sum of **\$122,000** including direct non-salary expenses.

5. TIME OF AGREEMENT:

This Agreement shall commence on **August 15, 2006**, and shall terminate on **June 30, 2009**. Certificate(s) of Insurance must be current on day Contract commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor. The final invoice must be submitted within 30 days of completion of the stated scope of services.

6. INSURANCE:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to County. The general liability policy shall be endorsed naming the County of Marin as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to the County prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to County of any cancellation in coverage. Said policies shall remain in force through the life of this Contract and shall be payable on a per occurrence basis only, except those required by paragraph 6.4. a. and b. which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation of Contractor's liability, and Contractor shall indemnify and hold the County, its employees, officers, and agents, harmless and defend the County against any and all claims, damages, losses and expense that may arise by reason of the Contractor's negligent actions or omissions. County agrees to timely notify Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit "C"** attached hereto. A waiver must address reduced amounts of coverage or the type of coverage waived entirely.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000.00). The County shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.2 AUTO LIABILITY

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars (\$1,000,000.00).

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.3 WORKERS' COMPENSATION

The Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

Insurance Reduction or Waiver of Coverage Requested (Exhibit "C")

6.4 OTHER INSURANCES

Contractor may be required to carry additional insurance based upon the nature of the work to be performed (scope of services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims-made policies must have a retroactive date either prior to the effective date of the Contract or the beginning of the Contract work. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of Contract work or end of current Contract, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claims made policy with a retroactive date prior to the Contract effective date, the Contractor must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of Contract work. Contractor shall maintain a policy limit of not less than one million dollars (\$1,000,000) per incident, with a deductible or self-insured retention not to exceed *\$2,500 unless approved by the County.

6.4.a Professional Liability Insurance..... (check box if required)

**Deductibles greater than \$2,500 require Insurance Reduction/Waiver form (Exhibit "C") to be completed.*

6.4.b Maritime Insurance..... (check box if required)

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

12. TITLE:

Any and all documents, information and reports concerning this project prepared by the Contractor, shall be the property of the County. The Contractor may retain reproducible copies of drawings and copies of other documents. In the event of the termination of this Contract, for any reason whatsoever, Contractor shall promptly turn over all information, writing and documents to County without exception or reservation.

13. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performances of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and worker's compensation.

15. AMENDMENT:

This Contract may be amended or modified only by written agreement of all parties.

16. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

17. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in MARIN County, California.

18. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's willful misconduct or negligent performance of this Contract. Nothing herein shall be construed as a limitation of Contractor's liabilities.

19. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws (including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance) affecting the services covered by this Contract.

20. NOTICES:

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager: Dana Armanino
Dept./Location: Community Development Agency, Rm 308
Telephone No.: 415-499-3292

Notices shall be given to Contractor at the following address:

Contractor: Quantum Energy Services & Technology, Inc. (QUEST)
Address: 2001 Addison Street, Suite 300
Berkeley, CA 94704
Telephone No.: 510-540-7200

21. ACKNOWLEDGEMENT OF EXHIBITS

CONTRACTOR'S INITIALS

- EXHIBIT A.** **Scope of Services**
- EXHIBIT B.** **Fees and Payment**
- EXHIBIT C.** **Insurance Reduction/Waiver**

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

**APPROVED BY
COUNTY OF MARIN:**

By: _____
BOARD PRESIDENT

CONTRACTOR:

By: _____
Name: _____
Telephone No.: _____

APPROVED AS TO FORM (if standard short form content has been modified):

County Counsel: _____
Date: _____

EXHIBIT "A"
SCOPE OF SERVICES (required)

Services to be provided by Contractor (as outlined in PG&E-Marin Energy Watch Contract, Attachment 1):

The Retro-Commissioning ("RCx") program element, or BTU Plus, consists of identifying and implementing Retro-Commissioning Measures and retrofits that will result in energy savings. Identification of energy efficient measures will be accomplished through installation of temporary or use of permanent energy system metering and monitoring equipment in designated buildings, at the building system and/or building subsystem level.

1. BTU Plus will initially be offered with two (2) phases of measure delivery.
 - a. In Phase I, Implementer or Implementer subcontractor's investigation will identify potential energy efficient measures. Once the measures are identified, the associated savings and costs will be estimated.

Identified customer facilities may use Implementer's staff to perform the measure installation in a turnkey manner, or they may use their own staff or contractor. Funds will be assigned to pay for the entire costs of the measure installation.

- b. In Phase II, Implementer or Implementer's subcontractor will conduct further analysis of additional measures. Phase II will not commence until Phase I measures at the Customer's facilities have been installed.
2. BTU Plus activities include:
 - a. Implementer or Implementer subcontractor installation of temporary or permanent energy system metering and monitoring equipment in designated buildings, at the building system and/or building subsystem level, in order to identify Retro-Commissioning Measures/actions that will result in energy savings achievements; and,
 - b. Implementer, Implementer's subcontractor, or Customer implementation of the Retro-Commissioning Measures/actions needed to achieve those energy savings. Retrofit energy efficiency Measures/actions identified as part of the RCx efforts will also follow the process set forth in this section.

Implementer or Implementer's subcontractor activities:

- i. Purchase and install as needed the metering and monitoring systems that will be used to identify retro-commissioning opportunities in the buildings of the Approved RCx Projects;
 - ii. Monitor energy usage in the buildings of the Approved RCx Projects;
 - iii. Prepare reports for Phase I and Phase II for submittal to PG&E's Program Manager for review and approval that describe the Retro-Commissioning Measures/actions that can be taken to reduce energy usage;
 - iv. Implement Retro-Commissioning Measures and take actions sufficient to achieve the energy savings set forth in the Phase I reports;
 - v. Identify additional retrofit or other projects in Phase II that could be undertaken to achieve additional energy savings;
 - vi. Implement Retro-Commissioning Measures and take actions sufficient to achieve the energy savings set forth in the Phase II reports;
 - vii. Document, to PG&E's reporting standards, all achieved energy savings, and
 - viii. Provide PG&E's Program Manager with information as needed for the EM&V reports or for other CPUC purposes required by the CPUC concerning BTU Plus.
 - c. PG&E and Implementer will review the Retro-Commissioning Measures/actions identified by the Implementer prior to Implementer, subcontractor, or Customer installation of identified measures. Implementer shall also provide documentation and reporting of Retrofit project information to PG&E's Program Manager for review and approval.
 - i. PG&E will complete and submit to Implementer for authorized signature, an Exhibit E, Monitoring Based Commissioning Project Agreement ("MBCPA"), or similar document, proposed by the Implementer and approved by PG&E's Program Manager, which provides the following information:
 1. Description of the project,
 2. The estimated Project cost
 3. Estimated energy savings,
 4. Projected completion date,
 - ii. Upon return of the signed MBCPA or equivalent from the Implementer, PG&E will review the form within seven (7) business days of receipt. By the 7th business day PG&E will notify the Implementer if the MBCPA or equivalent is approved or if, in PG&E's opinion, information on the document is deficient in some way and/or does not accurately reflect the attributes of the corresponding identified project.

- iii. If in PG&E's opinion the MBCPA information is deficient, PG&E will promptly notify Implementer of the deficiency and request the necessary changes. Implementer shall promptly make such changes, execute the revised MBCPA and resubmit it to PG&E's Program Manager.
 - iv. If PG&E determines that the MBCPA or equivalent document as resubmitted is still deficient, Implementer shall repeat document submittal process described this Contract Section. PG&E will communicate promptly with Implementer and assist the Implementer in supplying the information that was deficient and/or not accurately reflected on the Form
 - v. Provided PG&E determines that the MBCPA contains adequate information, PG&E shall review and approve the MBCPA within five (5) business days of receipt thereof.
3. Deliverables: Implementer shall provide a number of completed (installed and inspected) Phase I and Phase II Retro-Commissioning and/or retrofit Projects approved by PG&E's Program Manager sufficient to meet or exceed Implementer's Marin Energy Watch stated energy savings goals identified in Attachment A, Energy Savings Goals.

Retro-Commissioning and Retrofit Final Reports Due Dates for Deliverables: Completed (installed and inspected) Retro-Commissioning and/or retrofit Projects must be submitted to PG&E and paid by December 31 of a calendar year to qualify to be counted toward energy savings goals for that calendar year.

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

Fees:

The maximum compensation for labor, travel and materials is not to exceed \$122,000.

Billing will include Time and Material for all administrative, marketing and engineering work. Rebate payments to customers for energy efficiency measures will be billed in a lump sum. Billing rates for QUEST staff is as follows:

Director	\$190
Sr. Project Manager	\$175
Sr. Program Manager	\$160
Project Manager/Sr. Engineer	\$140
Engineer I	\$80
Admin Manager/Engineer II	\$100
Admin	\$60

Fee Schedule:

Administrative Costs	\$10,000
Marketing and Outreach	\$2,000
Direct Implementation Costs	--
DI Activity	\$10,000
Rebate Processing and Inspection	\$3,000
Engineering Services	\$28,000
Incentives and Rebates to Customers	\$69,000
Total	\$122,000